

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2022 ND 115

Jessica Schaff,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20210337

Appeal from the District Court of Morton County, South Central Judicial District, the Honorable Cynthia Feland, Judge.

AFFIRMED.

Per Curiam.

Mark C. Sherer, Dickinson, ND, for petitioner and appellant.

Chase R. Lingle, Assistant State's Attorney, Mandan, ND, for respondent and appellee.

Schaff v. State
No. 20210337

Per Curiam.

[¶1] Jessica Schaff appeals from an order denying her application for post-conviction relief. A jury found Schaff guilty of two counts of child neglect and two counts of child endangerment. Schaff argues her trial counsel was ineffective because he failed to object when the State, without offering laboratory test results, elicited testimony from law enforcement that substances they found in her residence were illegal drugs. After holding an evidentiary hearing, the district court denied Schaff’s application concluding the decision not to challenge the illegality of the substances was a matter of trial strategy. The court found Schaff’s attorney’s conduct did not fall below an objective standard of reasonableness, and even if it did, Schaff did not show the results of the trial would have been different absent the alleged error. We conclude the district court’s findings are not clearly erroneous. *See Truelove v. State*, 2020 ND 142, ¶¶ 6, 11, 945 N.W.2d 272 (the clearly erroneous standard of review applies to findings of fact in post-conviction relief proceedings; matters of trial strategy will not be second-guessed on appeal). We summarily affirm under N.D.R.App.P. 35.1(a)(2).

[¶2] Jon J. Jensen, C.J.
Gerald W. VandeWalle
Lisa Fair McEvers
Jerod E. Tufte
Daniel S. El-Dweek, D.J.

[¶3] The Honorable Daniel S. El-Dweek, D.J., sitting in place of Crothers, J., disqualified.